



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0452; FRL-11385-01-OGC]

Proposed Interim Consent Decree and Proposed Interim Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed interim consent decree and proposed interim settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding "Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency," notice is hereby given of a proposed interim consent decree and proposed interim settlement agreement in *Northwest Environmental Advocates v. EPA*, No. 19-01537 (W.D. Wash.). On September 26, 2019, Plaintiff Northwest Environmental Advocates filed a complaint alleging that EPA failed to perform duties mandated by the Clean Water Act (CWA) regarding Washington's obligation to develop Total Maximum Daily Loads (TMDLs) to address waters identified on the state's impaired waters list and that EPA's inaction was arbitrary and capricious under the Administrative Procedure Act (APA), among other claims. EPA seeks public input on a proposed interim consent decree and proposed interim settlement agreement prior to its final decision-making regarding entering into the proposed documents.

DATES: Written comments on the proposed interim consent decree and proposed interim settlement agreement must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0452 online at www.regulations.gov (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *www.regulations.gov*, including any personal information provided. For detailed instructions on sending comments, see the “Additional Information About Commenting on the Proposed Interim Consent Decree and Proposed Interim Settlement Agreement” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elise O’Dea, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-4201; email address: *odea.elise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Interim Consent Decree and Proposed Interim Settlement Agreement

On September 26, 2019, Plaintiff filed a complaint¹ in the Federal district court for the Western District of Washington alleging that EPA actions and inactions concerning the state of Washington’s water quality assessment and listing program and TMDL program violated the APA and section 303(d) of the CWA. Among other claims, Plaintiff asserted that EPA violated the CWA by failing to disapprove Washington’s alleged constructive submission of no TMDLs for waters on the state’s 1996 list of impaired waters needing TMDLs and to establish TMDLs for such waters. In August 2020, the district court granted Washington’s motion to intervene as a defendant in the litigation. The parties initiated settlement negotiations shortly thereafter, which led to the development of the proposed interim consent decree and proposed interim settlement agreement that are the subject of this notice.

The proposed interim consent decree and proposed interim settlement agreement would constitute the first part of a potential two-phase settlement framework and thus completion of the

¹ Plaintiff filed an amended complaint on January 24, 2020.

commitments set forth in each document would not result in dismissal of the litigation. Specifically, the proposed interim consent decree would require Washington to submit three TMDLs to EPA by December 2025 (Soos Creek fine sediment, Drayton Harbor bacteria, and Whatcom Creek bacteria) and would prohibit the Plaintiff from filing any new TMDL constructive submission lawsuits in Washington for a period of 34 months. Under the proposed interim settlement agreement, while the litigation was held in abeyance, an EPA-funded contractor would review and evaluate Washington's TMDL program to inform an EPA report providing recommendations for improving the program, particularly with respect to the timely development of TMDLs. Upon completion and consideration of the report, the parties would reengage in settlement discussions in an effort to reach a final agreement that would resolve the litigation.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed interim consent decree and proposed interim settlement agreement from persons who are not parties to the litigation. EPA also may hold a public hearing on whether to enter into the proposed interim consent decree and proposed interim settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed interim consent decree and proposed interim settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or APA.

II. Additional Information About Commenting on the Proposed Interim Consent Decree and Proposed Interim Settlement Agreement

A. How can I get a copy of the proposed interim consent decree and proposed interim settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0452) contains a copy of the proposed interim consent decree and proposed interim settlement agreement. The official public docket is available for public viewing at the Office of

Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed interim consent decree and proposed interim settlement agreement and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0452 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA does not plan to consider these late comments.

Steven Neugeboren,

Associate General Counsel.

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